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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director of Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, March 25, 1952. TENTH INFORMAL MEETING

ARTICLE XII

Mr. Otabe stated that further study had been given to the various comments made by the American side at the seventh and ninth meetings in clarification of Article XII. He added that the Japanese representatives were of the opinion that a reservation to paragraph 2 and 4, Article XII, was necessary in order to cope with possible stringencies in foreign exchange. In view of the fact that Article XIV also had a bearing on the extent to which Japan might retain freedom of action in the exchange-control field, Mr. Otabe proposed that a reservation with respect to both Articles be presented by the Japanese side during the discussion on Article XIV.

Mr. Bassin reminded Mr. Otabe of a comment made by the American side at the seventh meeting that it is indeed the intent of Article XII that it should, in and of itself, permit reasonable measures to safeguard Japan's balance of payments position. Mr. Bassin added that Article XII is not framed in such a manner as to afford reservations to the particular rules of non-discrimination set forth in Article XIV concerning import-export trade, and that the reservation in this connection may be found in Article XXI, paragraph 3. It is believed, however, that some additional provision might be required in view of the special circumstances arising in the case of Japan. Mr. Bassin stated that the American side was therefore prepared to explore with the Japanese what may be appropriate in these circumstances. He suggested that the formulations contained in the United States Treaties with Israel and Uruguay might be used as a starting point for discussion purposes.

Mr. Otabe replied that the Japanese side would consider such a reservation to Article XII and XIV for possible inclusion in the Protocol, using the treaties mentioned by Mr. Bassin as point of departure. The proposed reservation might be presented by the Japanese side during the discussions on Article XIV.

ARTICLE XIII

In order that the term "commercial travelers" might be more clearly understood, Mr. Otabe inquired whether this entry is governed by paragraph 1 (a) or 1 (b), Article II.

Mr. Bassin replied that a "commercial traveler" was an individual whose entry was governed by Article II, paragraph 1 (a). He added that Article XIII was concerned only with the extension of most-favored-nation treatment to such travelers with respect to customs, taxes, and similar matters.

Mr. Mori asked whether the term "commercial travelers", as used in Article XIII, meant only the nationals of the other party, or whether nationals of a third country were to be included within the scope of this Article.

Mr. Singer replied that Article XIII referred to individuals, regardless of their national status, who represented the nationals and companies of either party. He added that an American commercial traveler would be permitted entry into Japan under Article II, paragraph 1 (a), and that the latter clause did not govern the entry of non-Americans who might be representing American business interests. The entry into Japan of the latter would be subject to Japanese Law, and the treaty under discussion would not apply until entry had been granted, at which time the most-favored-nation treatment principle of Article XIII would apply.

Mr. Otabe stated that the phrase "taxes and charges applicable to them, their samples and the taking of orders" was not entirely clear to the Japanese side; he therefore asked for a clarification of this phrase.

Mr. Bassin replied that the taxes and charges mentioned in this clause were three-fold: taxes assessed against the individual and his income; charges imposed on the entry of sample goods carried by the individual; and, thirdly, charges imposed on the actual orders written or business transactions concluded by this individual. Mr. Bassin pointed out that samples are not normally subject to customs duties unless they are actually sold or left behind by the commercial traveler. Mr. Bassin added that Article XIII did not impose either on Japan or the United States any obligation to waive or rescind such taxes and charges as might be applicable under law, but rather that Article XIII extended both to Japanese and Americans the right of most-favored-nation treatment with respect to these taxes and charges.

ARTICLE XIV

Mr. Otabe referred again to the reservation which Japan would wish to make with reference to both Articles XII and XIV, and pointed to the close relation between these two Articles. He stated that either party should be allowed to impose restrictions on the exportation and importation of goods which would have the effect of restrictions on payments and transfers for international transactions, and that the former type of restrictions were considered necessary to make effective any measures to protect a country's balance-of-payments position. He added that such import-export restrictions should not be considered in violation of Article XIV in as much as such measures were recognized in the GATT.

Mr. Singer pointed out that Article XII permitted the imposition of foreign exchange restrictions to prevent Japan's monetary reserves from falling to a very low level.

Mr. Yukawa stated that in order to implement effectively such exchange restrictions it would sometimes be necessary to impose discriminatory restrictions on imports and exports of the type permitted under the GATT, and that some means of permitting Japan freedom of action in this connection would be necessary in view of its non-membership in the GATT.

Mr. Bassin replied that some provision might be made, such as the reservation already mentioned by the Japanese side, to meet this situation, and again suggested that the Japanese side present a draft for discussion at a later meeting.

It was agreed that discussions on Article XIV would continue at the next meeting, to be held on Friday, March 28, 1952.

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
Ministry of Foreign Affairs

/s/ Frank A. Waring

Frank A. Waring
Counselor for Economic Affairs
Office of the United States
Political Adviser, Japan